

PART II:

**STATE-BUILDING PROCESSES AND THEIR
IMPACT ON REGIONAL CO-OPERATION**

Facing the Challenges of the Kosovo Status Process – The International Perspective

Jolyon Naegele

Next month will mark the eighth anniversary of the establishment of the United Nations Interim Mission in Kosovo, UNMIK, as set out in UN Security Council Resolution 1244. The current debate over resolving Kosovo's status has been used by Belgrade and Moscow to allege that SCR 1244 has still not been fulfilled. I intend to argue that 1244 has been fulfilled to the maximum extent possible and that allegations to the contrary ignore reality in a bid to in the words of Richard Holbrooke "delay and dilute" the status process.

Article 10 of Resolution 1244 authorized the establishment of "*an international civil presence in Kosovo in order to provide an interim, administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia and which will provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo*". This was accomplished over five years ago with the establishment of the Provisional Institutions of Self Government or PISG.

Article 11a) through k) of SCR 1244 sets out UNMIK's mandate, which UNMIK has fulfilled. The head of UNMIK, the Special Representative of the Secretary General or SRSG, Joachim Rucker on 27 April told the UN Security Council fact-finding mission in Pristina:

- "Article 11a) Eight years after the conflict, "pending a final settlement", Kosovo enjoys self-government." Albanian majority municipalities for the last eight years have been *de facto* independent of Belgrade while Serbian majority municipalities have

only negligible autonomy from Belgrade's influence while avoiding all contact with the PISG.

- Article 11b,c,h) After the initial emergency assistance phase, in which UNMIK performed all basic civilian administrative functions and oversaw humanitarian and disaster relief aid, UNMIK fostered according to its mandate the development of the PISG, composed of a Government of 15 ministers from different communities, including a Kosovo Serbian minister. There are 30 municipalities. Kosovo Serbs constitute the majority of registered voters in four of them, where they maintain full control. The Assembly of Kosovo regularly passes a budget, which is self-funded, largely through customs duties. Four elections have been held since 2000, all of which were judged by IC observers to have been fair, transparent and up to highest democratic standards.
- Article 11d) UNMIK has transferred, or is in the final stages of transferring, every competency that can be handed over to the PISG without prejudice to the status or to the responsibilities of the international civil presence under 1244, most recently in the field of rule of law.
- Article 11e) Over the course of the last 18 months, as foreseen by SCR 1244, UNMIK has been fully engaged in facilitating the political process designed to determine Kosovo's future status, led by Special Envoy Martti Ahtisaari.
- Article 11f) UNMIK now stands ready to oversee the transfer of authority from Kosovo's provisional institutions to institutions established under a political settlement. A transition plan is in place. The EU stands ready to take over any further international functions mandated by this Council and to help with Kosovo's (and Serbia's) eventual integration into the EU. In the same way KFOR, or its successor, will remain to guarantee security.
- Article 11g) The basic infrastructure and legal basis for a functioning economy are now in place.
- Article 11i) The institutions underlying the rule of law, while still facing many challenges, are in place. The Kosovo Police Service and its Border and Boundary Police, the Kosovo Correctional

Services, the Judiciary, UNMIK Customs have all been formed and function well. Crime rates are down and on levels comparable with the region. Inter-ethnic crime, although rare, receives a disproportionate amount of publicity.

- Article 11j) Human rights instruments are embedded in Kosovo's legal systems and institutions: The Ombudsperson, the Office for Gender Affairs in the Office of the Prime Minister, and minority communities have a decisive say in legislation affecting their interests, fair-share financing, reserved civil service posts, etc.
- Article 11k) The area in which perhaps most progress remains to be made is that of return of refugees and internally-displaced persons (IDPs). It should be recalled that at the time when SCR 1244 was enacted, the returns referred to were actually close to one million Kosovo Albanians who had been ousted from their homes by the Serbian military, paramilitaries and police and who were forced to seek refuge in neighboring countries. Others fled to Kosovo's hills, where they lived in the open for up to 11 weeks. The overwhelming majority returned from abroad, but according to UNHCR, there are still some 200 000 mainly K-Albanians living mainly in Western Europe and unable to return because their homes are in Serb-majority areas and are occupied, destroyed or otherwise inaccessible. In recent years, several states, notably Germany, have forcibly returned some 6000 refugees to Kosovo. However, this is not to deny that large numbers of Serbs and other non-Albanian communities left Kosovo in the immediate aftermath of the conflict, possibly as many as 200 000, including according to a UNHCR estimate, as many as 50 000 Serbian speaking K-Roma. In the last seven years, UNMIK has registered nearly 16 500 returns, 44 percent of them Serbs, 39 percent of them Roma, Ashkali and Egyptians. Their return is welcomed by the Government and local administrations. The PISG provide the vast majority of funding, spending over 40 million Euros on returns to date. While security perceptions continue to play a role, the main issues now for those who intend to return seem to be economic recovery and jobs. This recovery in turn depends largely on status. Most returns are "spontaneous" rather than organized and thus occur despite repeated dire, un-

truthful warnings by certain Belgrade politicians that the time is still not ripe to return due to the security situation and lack of freedom of movement, which to put it mildly is a misrepresentation of the facts.

The security situation is remarkably stable and freedom of movement is extensive and most Kosovo Serbs by now have two sets of number plates for their cars – a legal UNIK-issued set of Kosovo plates that do not betray the origins of the vehicle’s owner but are invalid in Serbia and subject to harassment in Serbian inhabited areas of Kosovo, and Serbian-issued number plates denoting the region of origin in Kosovo (PR for Pristina, PZ for Prizren, etc.). These plates are not recognized by UNMIK and the Kosovo authorities.

In the last eight years, Kosovo has changed markedly as much thanks to the international community as to the generous support of the Kosovo Albanian Diaspora which was crucial in the early years in keeping the economy above water. Infrastructure has immeasurably improved, so has payment of utility bills, although there is still plenty of room for further progress. An ever growing proportion of the Kosovo-Albanian majority has become urbanized and globalized. Broadband internet service is now available at reasonable cost in most neighborhoods of Pristina. The urban public is well informed and difficult to manipulate thanks to a competitive news media.

Regrettably, this has not stopped extremists on either side from resorting to “rent-a-crowd” tactics. Kosovar-Albanian extremists bussed less-well informed small town and rural residents as well as Albanians from neighboring states to ensure a respectable turnout at demonstrations in Pristina on 10 February and 3 March. Similarly, Kosovar Serbian extremists in their attempt to stage a mass protest by some 10000 people, allegedly IDPs, during the Security Council’s fact finding mission last month, relied heavily on residents of northern Mitrovica as well as civil servants from elsewhere in Kosovo on Belgrade’s payroll. These “volunteers” were bussed out of Kosovo via Zubin Potok and Banje and then through Serbia to “Gate 1” at Jarinje where they gathered at the Kosovo boundary on 26-27 April, to pose for the news media as IDPs.

Meanwhile, six and a half years after the fall of Milošević regime in October 2000, Belgrade's authorities and some elements of the Serbian Orthodox Church continue to espouse views on Kosovo perilously close to those of the *ancien régime*.

Attempts at genuine cooperation between Belgrade and UNMIK largely collapsed in the wake of the assassination in March 2003 of Prime Minister Zoran Djindjić. The international community's attempt in Vienna in October 2003 to launch a dialogue between Pristina and Belgrade on technical issues failed to gain significant momentum, thanks in part to concerns among Kosovo Albanian parties that dialogue was premature as long as Belgrade and Pristina were not equals politically and as long as Belgrade would not formally acknowledge the considerable harm it had wrought on its own citizens in Kosovo during the 1990s. In retrospect, it could be argued that this pressure by the international community was counterproductive by contributing to public anxiety and to the psychosis of the K-Albanian extremists who led the anti-Serbian riots in March 2004.

For its part, Belgrade has seen no point in doing the Kosovo Albanians, particularly the Provisional Institutions of Self-Government or PISG, any favors.

The fact of the matter is that since the beginning of 2004, Belgrade has orchestrated an ongoing and ever growing boycott by Kosovo Serbs of the PISG. All but one of the 12 Serbian members of the Kosovo Assembly are boycotting Assembly sessions, although they do continue to maintain offices in the Assembly building where they regularly meet.

Article 14 of 1244 "demands full cooperation" with the ICTY. UNMIK and the PISG have cooperated fully with the Hague Tribunal, confirmed by the ongoing trial of former Prime Minister Ramush Haradinaj, who surrendered voluntarily to the ICTY. The same cannot be said for Belgrade.

Very few elements of resolution 1244 have not been implemented. Most notably, Article 4 and Annex 2, paragraph 6: "... *after withdrawal, an*

agreed number of Yugoslav and Serbian personnel will be permitted to return to perform the functions in accordance with annex 2." Annex 2 in turn defined these functions as:

- *Liaison with the international civil mission and the international security presence;*
- *Marking/clearing minefields;*
- *Maintaining a presence at Serbian patrimonial sites;*
- *Maintaining a presence at key border crossings.*

Belgrade did establish a liaison office in Pristina that it closed subsequently following a bomb attack. Belgrade maintains numerous visible and not so visible elements of a presence in ethnically Serbian inhabited areas of Kosovo: schools, post offices, clinics and even interior ministry facilities for issuing identity documents and passports and for registering property sales. However, the return of a limited number of Serbian forces has not even been a subject of discussion between UNMIK and Belgrade since an exchange of letters between Prime Minister Djindjić and SRSG Michael Steiner in February 2003, just days before Djindjić's assassination. In his response to Djindjić's request, Steiner wrote, "*Sending Serbian security forces to Kosovo under existing circumstances would not contribute to stabilizing the situation and would create problems of its own.*" The SRSG cited the Security Council President's statement of 6 February 2003, "*The Council strongly rejects unilateral initiatives which may jeopardize stability and the normalization process not only in Kosovo but also in the entire region*" and "*... rejects any attempts to exploit the question of the future of Kosovo for political ends*".

The Kosovo Protection Corps now handles mine clearance; KFOR provides security at those Serbian patrimonial sites where KFOR deems its presence necessary and border crossings are staffed by the Kosovo Police Service and its Border and Boundary Police, UNMIK Police and UNMIK Customs, while the Kosovo Interior Ministry/MUP man the Serbian side of the boundary crossings with Kosovo.

There is little more that UNMIK can do at this stage to implement SCR 1244 beyond ensuring further implementation of Kosovo standards, transition planning, outreach, and expectation management. Once the Security Council adopts a new resolution on status replacing SCR 1244, UNMIK will divest itself of all remaining competencies, mainly to the Kosovo authorities and in some limited areas to the International Civilian Mission and its EU-led police and security counterpart. During the 120-day transition period starting with the passage of the new resolution until UNMIK's mandate comes to an end, the Kosovo Assembly will have the daunting task of passing an extensive quantity of vital legislation as spelled out in the Ahtisaari Plan, as well as finalizing a Constitution for Kosovo.

The list of Belgrade's attempts to block, stymie, delay and dilute not only the resolution of Kosovo's status but even maintenance of the status quo is lengthy and revealing. Belgrade's actions in Kosovo pursue two interrelated goals: isolation of Kosovo Serbs from the PISG while strengthening their ties with Serbia, and hampering UNMIK's efforts to establish multi-ethnic institutions.

Belgrade has declined repeated requests by UNHCR to conduct a new census to determine how many IDPs there really are at present from Kosovo. Belgrade's claim that there are more than 200,000 IDPs from Kosovo in Serbia is suspect as it is believed to contain IDPs from Croatia and Bosnia-Herzegovina who were resettled in the 1990s in Kosovo, as well as civil servants from other parts of the former Yugoslavia deployed in Kosovo during the 1990s. One of the reasons that so few Serbs have returned over the last seven years has been Belgrade's frequent, misleading warnings and false allegations that it is not yet safe for IDPs to return and that there is no freedom of movement.

Article 2 of SCR 1244 "demands the full cooperation of the Federal Republic of Yugoslavia in (the) rapid implementation" of the principles in annexes 1 and 2. As Belgrade has repeatedly noted, the Republic of Serbia is a successor state. The principles in Annex 1 covered *inter alia* a "comprehensive approach to the economic development and stabilization of the crisis region. However, in an effort to assert its sovereignty

Belgrade has proceeded to block, hinder and impede a variety of activities. In addition to discouraging returns and boycotting the Assembly and other Kosovo institutions, the list of Belgrade's "sins" includes:

- Maintenance of parallel structures in police, courts, schools, hospitals, and cadastral records in Serbian-inhabited areas of Kosovo.
- Barring Kosovo Serbian civil servants, including teachers and health workers from collecting their salaries out of the Kosovo Consolidated Budget. Instead they are pressured into accepting a single salary from Belgrade, which effectively eliminates contact with the PISG and makes K-Serbs financially dependent on Belgrade and easy to manipulate for political ends.
- Misrepresenting the situation in Kosovo and alleging that the perpetrators of ordinary criminal acts are 'Albanian terrorists', even before details are known.
- Refusing to cooperate in security and judicial issues: hampering dissemination of summonses for persons currently in Serbia; lack of cooperation with the Kosovo Police Service and courts in Kosovo, hindering police investigations; stationing and increasing the number of covert MUP (Serbian Interior Ministry) officers in the north as well as in Serbian-inhabited areas south of the Ibar river; non-cooperation with Kosovo authorities on boundary issues.
- Non-recognition of UNMIK (i.e. Kosovo) vehicle registration and civil registration: preventing holders of UNMIK travel documents and cars with Kosovo license plates from traveling to or through Serbia unless they have a Serbian ID (*lična karta*) or passport or else a passport of a third country. All available information suggests that Belgrade intends to boycott the upcoming Kosovo census and in the event of Kosovo becoming independent Belgrade will not recognize Kosovo nor will it recognize dual citizenship for holders of Kosovo citizenship.
- Denying pensions to Kosovo Albanians.
- Declaring entry into Kosovo in any form except from Serbia proper illegitimate; barring entry to third country civilian travelers, including UNMIK, staff wishing to travel to or transit

through Serbia unless they have a recent Serbian stamp in their passports and on condition they do not have more recent stamps in their passports from third countries.

- Closing Serbian AND Belgrade-controlled Montenegrin airspace to commercial flights to and from Pristina, requiring a detour of several hundred kilometers (circa 20+ minutes extra flying time) for all flights between Pristina and Central and Western Europe. This not only wastes fuel and substantially increases the price of air tickets to and from Prishtinë/Priština, it also results in Serbia, Montenegro, Bosnia and Kosovo foregoing millions of dollars of income annually from over-flight fees. Belgrade has also refused all compromise offers from UNMIK to resolve the issue by delegating airspace control to third countries.
- Lobbying the International Telecommunications Union not to grant UNMIK an international dialing code for Kosovo, which currently has a Serbian code for ground lines and a Monaco code for the cellular network. Moreover, Belgrade has separated the fixed line telephone network in the Serbian-majority municipalities from the rest of the Kosovo network.
- Supporting illegal communications activities in Kosovo of Serbian cellular telephone providers that have never even applied for an operator's license in Kosovo, and claims that Kosovo telecommunication sector should be regulated and administered from Belgrade in contravention of the existing legal framework in Kosovo.
- Depriving the Kosovo transmission systems operator of several million euros annually in transit fees through its network.
- Supporting a parallel energy operator in Kosovo (Elektrokosmet), which operates in Serbian enclaves. Protecting the market of this operator, which is also siphoning off electricity worth several million euros annually from the network of the Kosovo Energy Corporation (KEK) without payment.
- Hindering the normalization of rail traffic in the region by blocking Kosovo's membership in the International Railway Union and depriving UNMIK Railways of substantial revenues.

- Refusing to accept UNMIK's authority to privatize socially-owned enterprises (SOE) and administer publicly owned enterprises in Kosovo.

What all this means is that if the past is prologue we can expect a continued lack of cooperation from Belgrade in the event that agreement is reached in the Security Council on a resolution resolving Kosovo's status. The real losers once again will be the Serbs in Kosovo, who as long as they remain dependent on Belgrade for their livelihoods and well-being will have no choice but to tow the line. Despite more than two years of talks about decentralization, we can expect Belgrade to order Kosovo Serbian representatives to refuse cooperation with Kosovo authorities in the implementation of decentralization. Belgrade can be expected to test the future International Civilian Mission and its EU-led Police and Justice counterpart to see to what extent it differs from UNMIK in its ability and authority to carry out its mandate. Belgrade will immediately seek to fill any perceived vacuum or slack in Serbian-inhabited areas.

The decision on resolving Kosovo's status lies with the UN Security Council and while the optimists predict a resolution in a matter of weeks, the realists warn that Belgrade's and Moscow's tactics of "delay and dilute" risk dragging matters into the Autumn with the risk of tensions in Kosovo growing in the meantime. A weak resolution lacking in clarity could have the same negative effect as a hasty Security Council vote resulting in a veto: namely, unilateral moves in contravention of UN SCR 1244.

Regardless of which scenario becomes reality, Belgrade will not come to terms with the loss of Kosovo in the foreseeable future and quite possibly not in our lifetimes. Dialogue to date has been disappointing to say the least, largely due to indifference on both sides while mutual animosity and mistrust will ensure that reconciliation remains a pipe dream.

The international community is divided on Kosovo. A number of permanent and non-permanent Security Council members remain unconvinced of the wisdom of independence. The EU also faces some dissen-

sion within its own ranks. Meanwhile, Washington, London and Paris perceive Kosovo as an issue that should be resolved quickly rather than be allowed to fester, *inter alia* to allow troops currently serving in KFOR to be redeployed to trouble-spots elsewhere in the world.

However, the vast majority of states in southeastern Europe remain concerned that an independent Kosovo would be a destabilizing element in the region (SEECF). This is not so much due to concerns related to organized crime, which knows no state or ethnic boundaries and is not significantly worse in Kosovo than elsewhere in the region. Rather the concern, which is not entirely misplaced, appears to be with Kosovo as a wellspring of political instability for the region.

Certain competing groups and individuals in Kosovo and in the Albanian Diaspora have little interest in the broader impact of their actions. Moreover, elements of the Albanian Diaspora have the ability as they did a few years ago, to move funds, weapons and manpower on very short notice, although many of them have become politically marginalized in recent years. What they lack today is broad public support for their cause; for them Kosovo's independence is a stepping stone toward a larger state. However, support for a greater Kosovo or a greater Albania, is as negligible in Pristina as it is in Tirana.

Meanwhile, by concentrating on the lost cause of retaining Kosovo while taking insufficient notice of where their own ship of state is heading, members of the Belgrade leadership have put their state's political and economic stability at risk, as we have seen in the past week.

Slovenia's President Milan Kučan remarked in (at the Summit of Central European presidents in Litomyšl, Czech Republic) in 1994 that the Balkans will remain unstable as long as Serbia has not resolved what the other states of East Central Europe resolved in the course of the 19th and early 20th centuries: defining its identity and boundaries. In this sense, resolving Kosovo's status by putting SCR 1244 to rest should help Serbia to do just this.

Kosovo is by no means the last piece in the Balkan jigsaw puzzle.